

## REMARKS

### **I. General:**

The office action dated November 14, 2008 was made final because according to the Examiner, Applicant's amendments necessitated the new grounds of rejection. For at least the reasons that follow, Applicant respectfully requests reconsideration and withdrawal of the finality of the last office action.

Claims 9, 10, 12, 13, 25, 26, 27, 28, 30, and 35 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 3,195,835 to Eyre et al. (hereinafter referred to as "Eyre") in view of U.S. Patent No. 4,134,518 to Trecker (hereinafter referred to as "Trecker") and possibly the admitted prior art on page 4 of the disclosure. For at least the reasons that follow, Applicants respectfully request reconsideration and withdrawal.

Claims 22-24, 32, 33, and 34 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Eyre, Trecker and further in view of U.S. Patent No. 6286462 to Burns (hereinafter referred to as "Burns"). For at least the reasons that follow, Applicants respectfully request reconsideration and withdrawal.

Claims 11, 21, 29, and 31 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Eyre, Trecker and further in view of U.S. Patent No. 4,034,518 to Bernier (hereinafter referred to as "Bernier"). For at least the reasons that follow, Applicants respectfully request reconsideration and withdrawal.

### **II. The finality of the previous office action is improper and should be withdrawn.**

Second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is not necessitated by applicant's amendment of the claims. M.P.E.P. § 706.07(a).

In the present situation, each of the claims is being rejected for the first time based in part on Trecker. While the Examiner contends that Applicants' amendment from 9/10/07 and 1/14/08 necessitated the new grounds of rejection, to make matters simple, Applicant points out that the finality is improper for at least the reason that claim 1 (and many of the other claims as well) has never been amended and is in original form.

Accordingly, at least with respect to the rejection of claim 1, Applicant has not performed any amendment, which could have possibly necessitated a new ground of

rejection for this claim. Therefore, for at least this reason, Applicant respectfully requests reconsideration and withdrawal of the finality of the previous office action.

**III. Trecker is non-analogous art; and, therefore, Trecker cannot be relied upon under 35 U.S.C. § 103.**

To rely on a reference under 35 U.S.C. § 103 it must be analogous prior art. See M.P.E.P. § 2141.01(a), I. A reference in a different field may be reasonably pertinent if it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his or her invention as a whole. Id. "While Patent Office classification of references and cross-references in the official search notes of the class definitions are some evidence of "nonanalogy" or "analogy" respectively, the court has found "the similarities and differences in structure and function of the inventions carry far greater weight." See M.P.E.P. § 2141.01(a), II.

Applicants respectfully submit that the portable camping cot and table of Trecker does not deal with matter which logically would have commended itself to Applicants' attention considering Applicants' invention as a whole relates to a balloon launching method. Furthermore, Applicants respectfully point out that the Patent Office has assigned the present application and Trecker to different classes. Moreover, there are substantial differences between the function of the present application as recited in the claims and the function of the "portable camping cot and table" in Trecker. See examples in M.P.E.P. § 2141.01(a), IV.

In particular, while the Examiner contends that Trecker teaches a launch platform on which an uninflated balloon can be placed, Trecker simply does not teach that the camping cot and table performs this function and one of ordinary skill in the art would not even contemplate using the "portable camping cot and table" of Trecker for the purposes of providing a launch platform for a balloon. Accordingly, Applicants respectfully submit that the "portable cot and table" of Trecker is non-analogous art and cannot be relied upon under 35 U.S.C. § 103.

Since each of the rejections rely on Trecker to some extent, each of the rejections are improper and should be withdrawn.

**IV. Neither Eyre, Trecker, Burns, nor Bernier, whether alone or in combination, each or suggest all the elements of claims 9-13 and 21-35.**

Claim 9 recites the step of “opening a cover on a case and extending at least one panel from the case to provide a launch platform on which an uninflated balloon can be placed”. According to the Examiner, Trecker teaches this step. However, Trecker relates to a “portable camping cot and table”. Trecker does not teach or suggest that the “portable camping cot and table” includes at least one panel that is extended to provide “a launch platform on which an uninflated balloon can be placed”, as the Examiner contends. Furthermore, one of ordinary skill in the art would not be motivated to use the “portable camping cot and table” of Trecker to provide a launch platform for a balloon. Therefore, for at least this reason, claim 9 and claims 10-13 and 21-26, which depend from claim 9, are allowable over Trecker even when combined with Eyre, Burns, and/or Bernier.

Regarding claims 10 and 28, Trecker does not teach or suggest that the case disclosed therein “provides an enclosed space for the storage and transport of said uninflated balloon.” Again, the device of Trecker is a “camping cot and table”, not a balloon launching system. Accordingly, for at least this reason, claims 10 and 28 are allowable.

Regarding claims 12 and claim 27, according to the Examiner, Eyre “teaches that the canopy 13 is made out of light weight fabric” and one skilled in the art would have used Lycra as the material in the launch bag of Eyre as a mere substitution of parts. Applicants respectfully disagree. As the present application teaches, use of an elastic material cradles the balloon more securely as it is inflated. Chamberlain, Pg. 4, ll. 17-19. In particular, as figures 5 and 6 of the present application shows, use of an elastic material may allow the launch bag to cradle the balloon more securely during various stages of inflation.

Despite elastic materials being known at the time of the invention of Eyre, rather than including an elastic material in the canopy 13, the device of Eyre uses straps 61 that are let out as the balloon is inflated. Eyre, Col. 3, ll. 22-29. In this manner the straps 61 can be adjusted so that the canopy 13 cradles the balloon as it is inflated. Plainly, the device of Eyre takes a completely different approach than the present invention; and Applicants respectfully point out that given that the device of Eyre already includes straps it would not be obvious to include an elastic material, which were known at the

time of Eyre, in the canopy 13 of Eyre. Therefore, for at least this reason, claims 12 and 27 and claims 28-35, which depend from claim 27, are allowable over the cited references

Furthermore, with respect to claim 12 and 27, although the Examiner contends that cotton is elastic, Applicants' point out that Eyre does not teach that the canopy 13 is made from cotton. Accordingly, Applicants submit that the Examiner's opinion on the elasticity of cotton is not germane to the issue of patentability.

Moreover, with respect to the Examiner's comment about the criticality of this feature, Applicant is under no obligation to cite criticality of such a feature. The M.P.E.P. plainly provides that "all words in a claim must be considered in judging the patentability of that claim against the prior art." M.P.E.P. § 2143.03. Further, as already pointed out, use of an elastic material allows the launch bag to cradle the balloon as it is inflated. In contrast, Eyre uses straps that must be let out.

Claim 25 recites the step of "extending another panel from the case to provide the launch platform on which the uninflated balloon can be placed" and claim 35 recites "wherein the launch site includes a launch platform that is provided, at least in part, by extending a first and a second panel from an open case". According to the Examiner, Trecker teaches this step. However, as pointed out above with respect to claim 9, Trecker relates to a "camping cot and table". Trecker plainly does not teach or suggest that the device is provided with panels that provide a launch platform on which an uninflated balloon can be placed, as the Examiner contends. Furthermore, one of ordinary skill in the art would not be motivated to use a "camping cot and table" to provide a launch platform for a balloon. Therefore, for at least this reason, claims 25 and 35 are allowable over the cited references.

Regarding claim 26, there simply is no requirement that Applicants "provide criticality" for the element "at least one of the panels extends beyond the end of the balloon", as the Examiner requires. The M.P.E.P. plainly provides that "all words in a claim must be considered in judging the patentability of that claim against the prior art." M.P.E.P. § 2143.03. Furthermore, with respect to the Examiner's contention that Applicants are trying to claim an apparatus and not a step, again, the M.P.E.P. plainly provides that "all words in a claim must be considered in judging the patentability of that claim against the prior

art.” M.P.E.P. § 2143.03. Moreover, there is nothing incorrect with claiming a method of using a particular structural arrangement. In view of the foregoing, Applicants submit that claim 26 is allowable over the cited art.

Claim 23 recites “at least one fitting that allows the case to be secured to a solid structure and claim 33 recites “at least one fitting that enables the case to be secured to a solid structure”. According to the Examiner Burns teaches a “fitting 34” that allows the case to be secured to a solid structure. Applicants respectfully point out that Burns teaches that the ring 34 is used for engaging hooks 32 so that a strap 30 may be used to carry or pull the pet carrier 20. Burns simply does not teach or suggest that the ring 34 allows the case to be secured to a solid structure.

Furthermore, while the Examiner contends that it would be obvious to take these structures from Burns and use them for the intended purpose of securing the system, neither of the cited references teach this purpose or teach the desirability of this purpose. Therefore, for at least this reason, Applicants submit that claims 23 and 33 are allowable over the cited art.

#### **IV. Conclusion:**

Applicants submit that the subject matter of the present application is novel, nonobvious, and useful. Accordingly, Applicants respectfully request that the rejections and objections be withdrawn and that the present application issue as early as possible.

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/Michael Pruden/  
**SIGNATURE OF PRACTITIONER**  
Michael Pruden, Reg. No. 52,135  
Ollila Law Group, L.L.C.  
Telephone: (303) 938-9999 ext. 22  
Facsimile: (303) 938-9995